

P21670.A04

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Takashi MORITA

Serial No. : 10/098,544

Filed : March 18, 2002

For : SCANNER HAVING A LIGHT BEAM INCIDENT POSITION  
ADJUSTING DEVICE



Group Art Unit: 2872

Examiner: J. Phan

**RESPONSE TO ELECTION OF SPECIES REQUIREMENT**

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Sir:

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In response to the second (or revised first) Examiner's Election of Species Requirement of September 25, 2003, in which a new one-month shortened statutory period for response was set to expire on October 27, 2003 (October 25, 2003 falling on a weekend), Applicant again elects the species of Group I, with traverse, for the reasons set forth hereinbelow. Claim 5 is considered to be readable on the invention of Group I.

Applicant respectfully traverses the Election Requirement for the same reasons set forth in the Response to Election of Species Requirement submitted July 7, 2003. In particular, the MPEP sets forth at section 803, "two criteria for a proper requirement for restriction between patentably distinct inventions: (A) The inventions must be independent...

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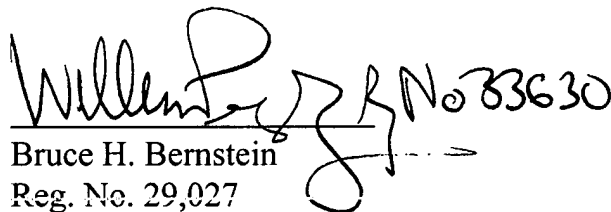
or distinct as claimed; and (B) There must be a serious burden on the examiner if restriction is required" (emphasis added). Both of these are explicitly related, by section citations, to election of species requirements. In this regard, Applicant respectfully submits that the Examiner has not demonstrated a showing of either criteria, let alone both. As was explained in the previous Response to Election of Species Requirement, the Examiner has not demonstrated a serious burden. Additionally, the Examiner has not established that the embodiment of the invention identified as "Species I" is mutually exclusive (not capable of use together) with each of the other embodiments, and particularly with the features of claim 1 (Species III) or claims 2-4 (Species II), such that an Election of Species Requirement might be proper.

For the reasons noted above and in the previous Response to Election of Species Requirement, and consistent with office policy as set forth in MPEP 803, 806 and 809, Applicant respectfully requests that the Examiner reconsider and withdraw the Election of Species Requirement. For each of the reasons noted above, Applicant submits that the Requirement for Election of Species in this application is improper and it is respectfully requested that it be reconsidered and withdrawn.

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Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,  
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October 8, 2003  
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